IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CIVIL REVISION APPLICATION No 7 of 2004

For Approval and Signature:

HON'BLE MR.JUSTICE P.B.MAJMUDAR

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1. Whether Reporters of Local Papers may be allowed to see the judgement? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

INTEROCEAN SHIPPING (I) PVT. LTD

Versus

CAPT. KUDLSHKIN VOLODYMAR

Appearance:

M/S THAKKAR ASSOC. for the Petitioner.

NOTICE UNSERVED for Respondent No. 1-2

NOTICE SERVED for Respondent No. 3-4

Mr.R.M. Chauhan, Assistant GOVERNMENT PLEADER, for Respondent No. 5

CORAM : HON'BLE MR.JUSTICE P.B.MAJMUDAR

Date of decision: 11/03/2004

ORAL JUDGEMENT

Heard Mr.Dagli for the petitioner and Mr.R.M. Chuahan, learned AGP, for the State.

By filing this Civil Revision Application, the applicant has prayed that the learned trial Judge has erred in not passing any order of refund, even though the suit is withdrawn. According to the petitioner, he will be entitled to refund of court fee to the extent of two-third amount of court fee. The trial Judge has come to the conclusion that the plaintiff has withdrawn the suit, but, by mistake order of refund of court fee is passed. The trial court came to the conclusion that, in fact, amount of court fee was not paid at all and hence, there was no question of refunding any amount. Under the circumstances, the trial court directed the plaintiff to pay the remaining amount of court fee within the stipulated time. Learned Advocate for the petitioner submitted that the petitioner has already paid the entire court fees and, therefore, at the relevant time, even though, by mistake, refund order was passed by the trial court, since he had paid the court fee, he is entitled to withdrawal of the court fee, as provided in the Court Fees Act. If the petitioner has subsequently paid the court fee, it will be open for the petitioner to apply for refund of court fee by preferring appropriate application before the same court, before whom the suit was pending and was subsequently withdrawn. If any such application for refund of court fee is made, the trial court may decide the same on its own merits and in accordance with law, without being prejudiced by the earlier order. The petition is accordingly disposed of.

11th March, 2004 (P.B. Majmudar, J.)

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(apj)